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# Supreme Court of the United States

October Term, 1943.

No. 712

**PATRICK HENRY KELLEY,**  
*Petitioner,*

v.

**AMERICAN SUGAR REFINING COMPANY,**  
*Respondent.*

**ETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FIRST CIRCUIT.**

**PATRICK HENRY KELLEY,**  
*Pro se,*

**DANIEL J. LYNE,**  
*Counsel for Petitioner.*



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## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

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TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your Petitioner, Patrick Henry Kelley, (Plaintiff below) prays that a Writ of Certiorari issue to review the judgment of the District Court of the United States for Massachusetts, dismissing the Complaint filed by the Petitioner. The judgment was affirmed by the Circuit Court of Appeals for the First Circuit on November 29, 1943. Jurisdiction is based on Diversity of Citizenship, U. S. Code Title 28, Sec.

tion 41(1). The Complaint alleges that the Petitioner is a citizen of Massachusetts and that the Respondent is a New Jersey corporation conducting a sugar refinery in Boston.

The Respondent, without filing an answer, filed a Motion to Dismiss on the ground (1) that the District Court had no jurisdiction and (2) that even if it had it should decline jurisdiction to interfere with and exercise control over the internal affairs and business of the Respondent. The District Court granted the Motion on the latter ground (2), and entered its judgment dismissing the Complaint without prejudice. The Circuit Court of Appeals affirmed the judgment. The Motion to Dismiss is found in the Record on Pages 13-14. The "Memorandum" of the District Court sustaining the Motion to Dismiss and its Judgment are found on pages 15, 16, 17. The Opinion of the Circuit Court of Appeals is annexed to the Record, Pages 21-27.

#### **Summary and Short Statement of the Matter Involved.**

(1) The Complaint alleges, Record, Pages 1 to 3, that the action is based on a Common Law contract made between the Petitioner and the Respondent in New Jersey, to recover a judgment for 24,500 dollars, the value of 200 shares of the Respondent's Common Stock purchased by the Petitioner in 1930, and the certificates for which were issued, registered and delivered in the Petitioner's name as owner by the Respondent for the fully paid par value of 20,000 dollars. That the Respondent was organized under the Corporation Law of New Jersey approved April 7, 1875, with an authorized capital of 90 million dollars, divided into 450 thousand shares of Preferred and 450 thousand shares of Common Stock, each of the par value of \$100 per share; that by the statute under which it was organized the

Respondent was authorized to exercise its franchise for a period "not to exceed 50 years"; that the Articles of Incorporation stipulated: "That business was to begin January 10, 1891 and terminate January 10, 1941."

Next it is alleged that in the Certificate of Incorporation it was also stipulated "that the Preferred Stock shall receive an annual cumulative dividend of 7% to be paid semi-annually on January 2nd and July 2nd of each year; and that "the holders of the Preferred Stock shall be entitled to receive no dividends beyond the seven percentum aforesaid."

The Complaint alleges that under the law of New Jersey the Preferred Stock was entitled to receive and did receive during the 50-year contract period payments annually, as stipulated, totalling 157,500,000 dollars, paid out of the earnings and surplus profits of the business; the last payment was made on January 2, 1941. That by the terms of the Articles of Incorporation and the law of New Jersey, all undistributed earned surplus profits, arising from the business which had accumulated and had been withheld by the Directors in not distributing it to the Common Stock owners during that period in dividends, was vested in the owners of the Common Stock by the Articles of Incorporation, and that the obligation of the Respondent as above became a fixed obligation on January 10, 1941; that the Respondent and its Directors were prohibited by the law of New Jersey from thereafter using the said earned surplus profits for the payment of dividends on the Preferred Stock under the stipulation in the Articles of Incorporation which provided that the Preferred Stock shall not be entitled to receive any dividends beyond 7 per cent.

*Bassett v. U. S. Cast Iron Pipe Co.*, 75 N. J. Eq. 539.

*Day v. U. S. Cast Iron Pipe Co.*, 95 N. J. Eq. 736.

The contract stipulations are found in Par. 3 of the Complaint, Record, Pages 2 and 3.

The Complaint next alleges (Par. 6, Record, Pages 5, 6) that the Petitioner received a notice in October 1940, that a Stockholders' meeting had been called for November 20, 1940, for the purpose of amending the Certificate of Incorporation by substituting the date "January 10, 1991" for the termination of the business in place of the date "January 10, 1941" which terminated the contract period for which Petitioner invested and thereby risked his capital in the Common Stock.

A copy of the proposed Amendment as drafted and submitted by the Directors and as later accepted by the necessary  $\frac{2}{3}$  majority vote in value of each class of stock at the meeting held November 20, 1940, is found in the Complaint; Record, Page 6.

The Complaint next alleges (Complaint Pars. 7 to 12 inclusive, Record, Pages 6 to 11 inclusive) that the Petitioner attended the said meeting and voted against the acceptance of the said Amendment; that by the required vote necessary to make it effective the Amendment was adopted by the Stockholders on November 20, 1940, and that immediately thereafter the Respondent as required by the statute in such case provided filed a Certificate of Amendment with the New Jersey Department of State which thereby authorized the Respondent to exercise its franchise from and after January 10, 1941 until January 10, 1991; that upon the filing of the said Amendment in the New Jersey Department of State, the Petitioner immediately notified the Respondent that the contract under which his investment in the Common Stock was made expired by its own terms on January

10, 1941; and that the Respondent would be required to pay the Petitioner the full value of his shares as of January 10, 1941. But that the Respondent thereafter refused to comply with the Petitioner's demand or to recognize his right as above claimed.

The attention of the Chief Justice and Associates is now directed to the fact that the allegations of the Complaint make no attack on the validity of the Amendment to the Articles of Incorporation nor upon the validity of the vote by which it was effected; that the Complaint seeks no remedy, and no aid nor relief against the Corporation nor its officers from the Court under the Equity Jurisdiction and Powers of the Court; that the remedy requested (Par. 6, Record, Page 12) is the Common Law remedy for Breach of Contract to pay a debt, or damages in money, namely, "Wherefore the Plaintiff requests that Judgment for the sum of 24,500 dollars with interest from January 10, 1941 be entered for the Plaintiff against the Defendant."

The Complaint alleges that the Petitioner's right to recover judgment, as above demanded, is based on the following facts, namely: That the plan to amend the Articles of Incorporation contained no provision for the payment and distribution by the Respondent of the undistributed "Earned Surplus" to the owners of the Common Stock pro rata, conditioned upon the ratification and acceptance of the proposed Amendment by the Stockholders; that in the absence of such a provision in the proposed extension of the franchise, all owners of the Common Stock who voted to ratify and accept the proposed Amendment as drafted and submitted by the Directors, *whether they knew it or not*, released, forfeited, and surrendered their contract rights to receive their pro rata share of the undistributed "Earned

Surplus" on January 10, 1941, a fund which was in excess of 10 million dollars and which had accumulated from the annual earnings and profits of the business, the "rights" in which had a cash value of 22 50/100 dollars for each share of Common Stock; the Petitioner's pro rata share in said undistributed "Earned Surplus" being of the value of 4,500 dollars for 200 shares, as shown by the corporate accounts "Consolidated Balance Sheet December 31, 1940," the last item of which is found in the Record on Page 6, namely, "10,142,226.26 Dollars Earned Surplus."

(Note) In answer to the comment in the Opinion by the Circuit Court of Appeals, Record, Pages 26-27, concerning the values shown by the Consolidated Balance Sheet, and the motives of the majority in voting for the Amendment, the attention of the Chief Justice and Associates is directed to the fact that the value of the assets as fixed in the said Consolidated Balance Sheet is computed on the present market or cost value, whichever is the lowest, as of December 31, 1940; *which of course is the liquidation value of the assets on that date.* This fact cannot be disputed as it is so stated in the account (Record, Page 4) items "Marketable Securities" and "Current Assets." As to the Fixed Assets, a sum of 45,205,036.27 Dollars is shown to have been arbitrarily extracted by the Directors from the annual yearly earnings and transferred to a "Reserve Fund for Depreciation and Amortization," created to balance the alleged depreciation by writing down their value, thereby reducing the Fixed Assets by a like amount from 114,607,141.93 Dollars; and thus reducing the "Earned Surplus" by this expedient from a sum which would have been in excess of 55 million dollars to 10,142,226.26 Dollars, as found in the Consolidated Balance Sheet. See "Total Assets," last item Record, Page 4. By the law of New Jersey the

Corporate Accounts are conclusive evidence on the basis of which the value of the Petitioner's shares must be fixed; in this action, neither the Court nor the Respondent may go behind the Corporate Accounts as kept by the Management in the absence of a claim by the Respondent that the Corporate Accounts as so kept by its Management are fraudulent.

*Lick v. U. S. Rubber Co.*, 39 F. S. 675, Citing the New Jersey Decisions, to the point.

The above sample of Corporate accounting is that usually employed by the managements of strong financial corporations who write their assets down for State and Federal taxation. The comment of the Circuit Court of Appeals referred to was not only contradicted by the facts recited in the "Consolidated Balance Sheet," but it was immaterial and irrelevant.

The Complaint alleges that the proposed Amendment contained no provision which required the distribution and payment of all undistributed "Earned Surplus" to the owners of the Common Stock in the event that the proposed Amendment was ratified and adopted by the necessary  $\frac{2}{3}$  majority vote in value of each class of stock required to make it effective; that in the absence of such a provision, the proposed plan, if accepted, put the clock ahead for the "termination of the business" from January 10, 1891 until January 10, 1991, and thereby legally operated to stop the "Tolling of the Bell" at the time appointed in the Articles of Incorporation which obligated the Respondent to distribute the said Earned Surplus, with the result that all owners of Common Stock who voted for its adoption, thereby forfeited their right to receive their share of the said fund and thereby permitted it to be used and applied by the

Respondent for all lawful purposes of the corporate Respondent, namely, (1) either the payment after January 10, 1941 of dividends on the Preferred Stock; (2) and the payment of debts contracted from and after January 10, 1941 up to January 10, 1991. And the Complaint alleges in Pars. 7 to 11 as found in the Record, Pages 6 to 10, that by reason of revolutionary changes in conditions which had occurred since January 10, 1891, the ability of the Preferred Stock to earn the dividends required by its contract as made on that date, and so as to leave any adequate return for dividends on the Common Stock had been impaired to such an extent that in the years 1938-1939, the Preferred Stock had failed to earn the dividends paid in those years by 3,200,000 dollars, which caused a deficit which reduced the Earned Surplus by a like amount to the sum as shown in the last item of the Consolidated Balance Sheet December 31, 1940; that whether so intended or not, the proposed Plan, if adopted, thus authorized the Respondent and its Directors to dissipate the entire Earned Surplus Fund of 10,126,226.26 dollars for the benefit of the Preferred Stock from and after January 10, 1941. The Complaint alleges that in such case the proposed plan to amend the Certificate of Incorporation impaired the exclusive right of the Common Stock in the Earned Surplus and was not binding as against the Petitioner who refused his assent and voted against its adoption.

*Lonsdale Security Corp. v. International Mercantile Marine Co.*, 101 N. J. Eq. 554. Leading Case.

The Complaint alleges that the Petitioner had the legal right upon the filing of the amendment under the law of New Jersey to withdraw from membership in the new enterprise and to demand the cash value of his shares as of January

10, 1941, with the status of a creditor in the enforcement of a contract obligation.

*Moore v. Splitdorf Electric Co.*, 114 N. J. Eq. 358  
Court of Errors and Appeal.

The proposed Amendment should have contained an option in the alternative by which the owners of the Common Stock who refused to accept it might surrender their shares for their cash value, conditional upon its acceptance by the necessary majority vote required to make it effective. In the absence of such an option, the Petitioner had the legal right to refuse his assent and to enforce the Respondent's obligation by a Common Law action as a creditor to obtain Judgment for their value.

*Moore v. Splitdorf Electric Co.*, 114 N. J. Eq. 358.  
*Lonsdale Security Corp. v. International Mercantile Marine*, 101 N. J. Eq. 554.

*Colgate v. U. S. Leather Co.*, 77 N. J. Eq. 72-96-97.  
Revised Statutes of New Jersey 1938, Title 14:  
"Corporations General; Section 14-2-9, which  
reads as follows:

Amendment or Repeal of Title: Charter Subject to Discretion of Legislature. Section 14-2-9: "This Title may be amended or repealed at the pleasure of the Legislature and every corporation created hereunder *shall be bound by such amendment.*

*"Such amendment or repeal shall not take away or impair any remedy against a corporation or its officers for any liability which shall have been previously incurred."* (Italics ours.)

The statute under which the Respondent's franchise was extended provides that the Certificate of Amendment shall be filed in the Department of State and that thereupon—“*The Certificate of Incorporation shall be deemed to be amended accordingly.*” “*The Certificate of the Secretary of State that such Certificate has been filed in his office shall be taken and accepted as evidence of such Amendment in all Courts and Places.*” Revised Statutes of New Jersey, 1938 Title 14: Corporations General; Section 14-11-2 Annexed as Appendix “A.” (Italics ours.)

The sole and exclusive effect of the statutes authorizing amendment to the Articles of Incorporation is merely to permit the Corporation as a legal entity distinct from its stockholders to do some act or to exercise a power which under the Articles of Incorporation and without such Legislative permission would otherwise be unlawful as against the State; the statute power is not intended in such case to authorize the alteration without consent of the vested rights of stockholders nor take away a remedy by which their contract rights as fixed by the Articles of Incorporation may be enforced.

*Grausman v. Porto Rico Tobacco Co.*, 95 N. J. Eq. 155, 162.

*Allen v. Francisco Sugar Co.*, 92 N. J. Eq. 431.

The filing of the Certificate of Amendment, as alleged in the Complaint Par. 9, Record, Pages 8 and 9, conclusively established the validity of the Amendment and the vote of the Stockholders by which it was accomplished.

*Smith v. Eastwood Wire Co.*, 58 N. J. Eq. 331.

Revised Statutes of New Jersey Title 14: Corporations General, Section 14-11-2, Appendix A.

The right to challenge the validity of the Respondent's franchise is the sole prerogative of the State itself, acting by its legal representative, the Attorney General.

*Elizabethtown Gas Light Co. v. Green*, 46 N. J. Eq. 118; Affirmed 49 N. J. Eq. 329.

### **The Opinion of the District Court of the United States.**

In the Opinion filed by the District Court sustaining the Motion to Dismiss, "Memorandum" Record, Pages 15, at 16, 17, the Court states: "That the solution of the Plaintiff's rights under the contract involves the internal structure of the defendant and its relation to its stockholders if not its existence as a corporation. *Kelley v. American Sugar Refining Co.*, 311 Mass. 617, 619. The law of New Jersey is readily ascertainable by reference to its published reports but the many vexing questions incidental to the issue raised ought not to be decided by Courts outside New Jersey." "On the authority of *Kelley v. American Sugar Refining Co.*, *Supra*, and *Rogers v. Guaranty Trust Co.*, 288 U. S. 123, the defendant's Motion to Dismiss is granted without prejudice."

### **Opinion of the Circuit Court of Appeals.**

The Court filed its Opinion, affirming the judgment on November 29, 1943. The portion which deals with the discretion exercised by the District Court to decline jurisdiction, Pages 24-26 Record, reads:

"The decision of the district court in declining to exercise jurisdiction was proper. It relied on *Rogers v. Guaranty Trust Co.*, 288 U. S. 123, the leading case on the doctrine of *forum non conveniens*. But the plaintiff argues

that that case by reason of the dissenting opinions therein is no longer controlling. The Supreme Court there said, page 130:

‘It has long been settled doctrine that a court—state or federal—sitting in one State will as a general rule decline to interfere with or control by injunction or otherwise the management of the internal affairs of a corporation organized under the laws of another State, but will leave controversies as to such matters to the courts of the State of the domicile.’

“While the strong diversity of opinions throws doubt on the applicability of the doctrine of *forum non conveniens*, to the facts of that case, they leave the rule itself intact for application to a proper case. The considerations which prompted Justice Stone to dissent from the refusal to hear the Rogers case on the merits were that the facts showed fraud on the part of the American Tobacco Co.’s officers in their management of the corporation, as well as the inability of the plaintiff to secure a complete remedy in New Jersey, the domicile of the corporation, in that all the parties were not ‘amenable to process’ in New Jersey whereas they were amenable in New York where the case was brought. He said, page 147:

‘In New York also the individual defendants and the trust company can be reached by injunction *pendente lite*, restraining the transfer to innocent purchasers of the stock, certificates for which are already issued and in the hands of the trust company. Under the circumstances of this case, only considerations of more compelling force than the possibility of inconsistent decrees should lead a forum, convenient in so many respects, to decline jurisdiction.’

And Justice Cardozo, also dissenting, said, page 151:

‘The doctrine of *forum non conveniens* is an instrument of justice. Courts must be slow to apply it at the instance of directors charged as personal wrongdoers,

when justice will be delayed, even though not thwarted altogether, if jurisdiction is refused. At least that must be so when the wrong is clearly proved. The over-mastering necessity of rebuking fraud or breach of trust will outweigh competing policies and shift the balance of convenience.'

"In the instant case, we have no such conditions as led to the dissents there. No fraud or other such inequitable conduct on the part of the defendant is here involved, nor can this court afford the plaintiff a more adequate remedy than the courts of New Jersey. On the other hand, strong reasons for the application of the doctrine are here present. *A decision on the merits rests not on common law but on the construction of several of the New Jersey corporation statutes from that of 1875, under which defendant was incorporated, down to that of 1937.* The question involved, which rests on those statutes and the decisions thereunder, is novel, complicated and difficult. (Italics ours.)

"The basis of plaintiff's determination to vote against the continued existence of the corporation was his belief that the prospective earnings value of his shares was less than their book value. Those who voted for the continued existence of the corporation might have come to the same conclusion that he did. But they might well have been led so to vote because of the realization that the liquidation value, should the corporate existence terminate, would have been far less than the prospective earnings value. If that be the case, to allow the plaintiff to recover the book value which he seeks would be to allow him to take from the corporation a far greater share of the assets than his true proportionate interest. Hence a judgment for the plaintiff, if judgment be for the plaintiff at all, would require the ascertainment of methods of computing liquidation value,

which problem would be much better left to the courts of New Jersey." (Italics ours.)

### **Jurisdiction.**

The jurisdiction of this Court is invoked under 28 U. S. C. 347 (a) which provides that the Judgment in any case Civil or Criminal entered in the Circuit Court of Appeals, may be reviewed by this Court upon the Petition of any party thereto to require by Certiorari after Judgment by such Court that the cause may be certified to this Court for determination by it, with the same power and authority and with like effect as if the cause had been brought to this Court by unrestricted appeal.

### **Statutes Involved.**

The Statutes of New Jersey involved are, namely:

- (A) Revised Statutes of New Jersey 1938; Title 14; "Corporations General"; Section 14-11-2.
- (B) R. S. of New Jersey 1938; Title 14: Corporations General; Section 14-2-9. Section 14-2-9 is set forth in the Petition on Page 9, Section 14-11-2 is annexed to the Petition as Appendix A.

### **Questions Presented.**

The questions presented are essentially fundamental and basic, namely:

- (1) That the District Court of the United States sitting as a Court of Common Law had no lawful discretion which could authorize it under its Common Law jurisdiction to

deprive the Petitioner of the right to institute, to maintain, and to prosecute this Complaint by the Common Law process of a Trial by Jury in order to procure a verdict and judgment against the Respondent for 24,500 Dollars as claimed by the Complaint; that the rights as above claimed were secured to the Petitioner by the 7th Amendment to the Federal Constitution and the Act of Congress conferring original jurisdiction of Common Law actions on the District Courts of the United States. That the Complaint sought no aid nor relief outside the Common Law, under the Equity Jurisdiction of the District Court, that the Complaint made no request nor required that the Court issue any order, injunction or decree, or otherwise to take any action which could lawfully operate to interfere with the right of the Respondent to control and manage its internal affairs, and that the Judgment dismissing the Complaint is an arbitrary usurpation of power prohibited by the 7th Amendment to the Federal Constitution and unauthorized by the Act of Congress enacted to preserve the right to a Common Law remedy, namely, the Verdict of a Jury and Judgment by due process of law.

(2) That the Supreme Court of the United States has repeatedly declared that the decisions of the State Courts which establish the public policy of the several States in the exercise of their jurisdictions, is immaterial, irrelevant and incompetent as authority to restrict, enlarge or control the jurisdiction conferred on the District Courts of the United States by Acts of Congress. That the case of *Kelley v. American Sugar Refining Co.*, 311 Mass. 617 on the authority of which the Judgment is based is incompetent and irrelevant as an authority to sustain the Judgment of the District Court in dismissing the Complaint.

(3) That the Action and Complaint filed in the District Court is an Action of Contract to recover a Common Law Judgment by the Petitioner, based on the law of New Jersey and on the individual right of the Petitioner, to obtain a judgment for money against the Respondent; that by the law of New Jersey the right of action alleged in the Complaint is a Transitory Right of Action and the Respondent, as declared by the Courts of New Jersey, enjoyed no exemption from liability to be prosecuted by the Petitioner in any State where it could be found; that the law of New Jersey, as above stated, is also the law as established by the decisions of the Supreme Court of the United States, whereas and to the contrary the doctrine of *Forum Non Conveniens* as interpreted and applied by the Courts of Massachusetts to Transitory Actions against so-called Foreign Corporations to obtain a Common Law Judgment for money has been criticized and declared unsound by the Supreme Court of the United States in *Denick v. Central R. Co.*, 103 U. S. 11, 21; 26 L. E. 439-442; and also in *Barrow Steamship Co. vs. Kane*, 170 U. S. 100; 42 L. E. 694. The Petitioner contends further that the decision in *Kelley v. American Sugar Refining Co.*, 311 Mass. 617, is in conflict with the Full Faith and Credit Clause, Art. 4, Sec. 1 of the Federal Constitution, and that the doctrine as applied in that decision is in conflict with the decision in *Broderick v. Rosner*, 294 U. S. 629, 71 L. E. 1100, and ought not to be accorded recognition in the Federal Courts.

(4) That the Doctrine applied in *Rogers v. Guaranty Trust Co.*, 288 U. S. 123, namely, that Courts will not by injunction or otherwise interfere with the control over the internal affairs of a corporate defendant organized in a State outside that in which the Court is sitting, was

applied in that case under the Equity Jurisdiction and power of the District Court in New York sitting as a Court of Equity as authorized and invoked by the allegations of the Bill and Prayers for Relief; that the said decision is not authority which can be used to sustain the judgment dismissing the Complaint, because the District Court under the allegations of the Complaint and the request that a judgment for 24,500 Dollars be entered against the Respondent, had no lawful power nor jurisdiction sitting as a Court of Common Law to take any action which could interfere with the Respondent's right to control its internal affairs.

(5) That the refusal of the District Court and the Circuit Court of Appeals to ascertain and apply the decisions of the Courts of the State of New Jersey and its applicable statutes, by which the right of the Petitioner to a judgment for 24,500 dollars was established, as alleged in the Complaint, is in conflict with the decisions of the Supreme Court of the United States, by which the said Courts are required to ascertain and determine the Petitioner's right to obtain a judgment against the Respondent by the law of New Jersey and the Rules of Decision, Section U. S. C. A. 725 and as applied in the decision in *Erie R. Co. v. Thompson*, 304 U. S. 64, 82.

(6) That the judgment of the District Court as affirmed by the Circuit Court of Appeals was entered in violation of the Petitioner's right to a trial by due process of law, as secured by the 5th Amendment to the Federal Constitution which required that the District Court should determine the Petitioner's right to a trial and judgment as based on the allegations of the Complaint; whereas and to the contrary the District Court refused the Petitioner

a hearing and trial on the allegations of the Complaint and exercised its jurisdiction and powers as a Court of Equity as based on the allegations of the Motion to Dismiss, filed by the Respondent as the adverse party, and thereby deprived this Petitioner of a hearing and trial on the Complaint without due process of law in violation of the 5th and 7th Amendments of the Federal Constitution.

### **Reasons Relied On for the Allowance of the Writ.**

The Writ should be allowed because the action of the District Court in entering a Judgment Dismissing the Complaint and the allowance of such judgment by the Circuit Court of Appeals is revolutionary in character, because in conflict with all applicable decisions of the Supreme Court of the United States and with all the decisions of the Courts of New Jersey. The Petitioner contends that no authority at present exists and can be found which will support and sustain the ground on which the judgment is based, namely, that the entry of a Common Law Judgment for money against the Respondent will interfere with the control by the Respondent of its internal affairs; that the conclusion of the District Court and Circuit Court of Appeals to the contrary is an obvious impossibility.

### **Conclusion.**

For the reasons assigned as above and as elaborated in the brief filed herewith, your Petitioner prays that a Writ of Certiorari be issued under the Seal of this Court directed to the Circuit Court of Appeals for the First Circuit to the end that the cause may be reviewed and determined by this Court and that the judgment of the Dis-

triet Court as affirmed by the Circuit Court of Appeals be reversed and that the Petitioner may have such further relief as may to this Court seem proper.

Respectfully submitted,

**PATRICK HENRY KELLEY, *Pro se.***  
**DANIEL J. LYNE,**  
*Counsel for Petitioner.*